tenement included, or capable of being included, in a Valuation List is sold or transferred the vendor or transferor shall within one month after such sale or transfer give notice thereof to the Chief Assessor. Section 43 of the Act provides that every person who sells or transfers any taxable property shall continue to be liable for the payment of all taxes payable in respect of such property before the notice under section 17(1) has been given. The notice of transfer under section 17(1) has not been given in the present case and consequently the defendants are still liable to pay the property tax of the said three premises.

The defendants say that the notice under section 17(1) has not been given for the simple reason that the title to the property cannot as yet be transferred as the subsidiary strata title certificates are not yet available. The notice under section 17(1) can only be given when the sale is completed.

I am unable to agree with the submission of counsel for the defendants.

By section 6(2) of the Act the property tax is payable half-yearly in advance by the owner of the property.

By section 2 "owner" "means the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if such premises were let to a tenant and includes the person whose name is entered in the Valuation List." In my view the plaintiff in this case comes within this definition. She has been treated by the Comptroller as the owner; she has been asked by the Comptroller to pay the property tax and she has paid the property tax since 1975. The Comptroller is now looking to the plaintiff for the payment of the property tax in respect of the said three premises. By section 6(3) the property tax is a first charge on the property and if the plaintiff fails to pay the property tax the Comptroller can seize the said three premises and sell them (section 35).

It is to be noted that by paragraph 4(c) of the letter of November 12, 1973, signed by the plaintiff at the request of the defendants, the plaintiff agreed to pay to the defendants the deposits against the property tax which are payable by the plaintiff and not the defendants.

It is clear that the said three premises had been sold to the plaintiff and the defendants should have given the notice under section 17(1). The defendants have refrained from giving the said notice and now say that they can keep the deposits.

In my view the plaintiff is entitled to the refund of the $7,500 deposit.

There will be judgment for the plaintiff in the sum of $7,500 and interest at the rate of 10 percent per annum from May 21, 1975, to date of payment and costs.

Claim allowed.

Solicitors: *Donaldson & Burkinshaw; Shook Lin & Bok.*

WEE BIAN HOCK v. KEPPEL SHIPYARD (PTE) LTD.

[O.C.J. (Rajah J.) April 20, 1978]

[Singapore — Suit No. 516 of 1973]

Labour Law — Factories — Injury from circular saw — Machinery not securely fenced — Inadvertent or careless acts of worker — Whether amounting to contributory negligence — Factories Act, 1973, s. 22(1).

Torts — Negligence — Inadvertent or careless worker — Whether amounting to contributory negligence.

Factories — Machinery not securely fenced — Factories Act, 1973, s. 22(1).

Machinery — Not securely fenced — Factories Act, 1973, s. 22(1).

In this case the plaintiff had been injured while operating a circular saw known as a rib-saw machine to cut strips of formica. A movable guard was provided for the saw, but the particular operation could not have been done with the guard in its safe down position. The plaintiff did the operation without the guard being in its safe down position and used his hands to exert pressure to keep the strip in position. While so doing his right hand slipped on the formica strip and he sustained injuries for which he claimed damages.

Held: (1) on the evidence it was clear beyond doubt that the defendants were in breach of their statutory duty under section 22(1) of the Factories Act in that they had not securely fenced the power-driven saw of the rib saw machine;

(2) the defendants had failed to prove contributory negligence on the part of the plaintiff. Inadvertent or careless acts and excusable lapses on the part of the factory worker would not amount to contributory negligence.

Cases referred to:

(1) *Ong Beng How* v. *Guan Seng Sawmill Company (Private) Limited* [1979] 1 M.L.J. 8.

(2) *Caswell* v. *Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 152.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.

C. Lau for the defendants.

Cur. Adv. Vult.

Rajah J.: In this case the plaintiff's claim was for damages for personal injuries and consequential loss suffered by him and caused during the course of his employment by the defendants as a Trainee Carpenter at the defendants' worksite at Keppel Harbour, Singapore, on or about the 31st day of July, 1972, by the negligence of the defendants, their servants or agents and/or by breach by the defendants of their duty to the plaintiff as employers of the plaintiff to take reasonable care for the safety of the plaintiff as their servant and/or by breach by the defendants of statutory duty under the Factories Act, 1973 (the Act).

At the outset of the trial the plaintiff abandoned his claim for special damages and it was agreed between the parties that on the basis of full liability general damages be fixed at $22,500. During the trial the defendants conceded that (i) the accident took place within a factory within the meaning of the Act of which the defendants were the occupiers at the time and (ii) the saw blade is a dangerous part within the meaning of section 22(1) of the Act.

The plaintiff was employed as a Trainee Carpenter at the defendants' premises at Keppel Harbour and while so employed he operated with another trainee a circular saw, known as a Rib Saw Machine, which was part of the defendants' equipment therein.

The saw was provided with a moveable guard above the bench table designed to cover the teeth of the saw above the bench table but the extent to which it could be lowered to cover the teeth of the saw depended on the thickness of the material being cut.

The said saw was normally operated by two operatives, one of whom fed the saw with the material being cut and the other pulled the material through.

On the 31st day of July, 1972 a number of strips of thin formica, which were about 1 inch in width had to be trimmed to a required width of $\frac{3}{4}$ inch for use as table edgings and the plaintiff proceeded to do this trimming by means of the circular saw.

For this trimming it was necessary for a strip of formica to be so manipulated that one edge of it was kept close against a guide (the distance required was $\frac{3}{4}$ inch from the side of the saw) while the strip was fed to the saw.

Due to the fact that the guard was about $1\frac{7}{8}$ inches wide and also, that if the guard had been in its safe "down" position, it would have extended several inches beyond the teeth of the saw, the said trimming could not be done, or alternatively could not be done properly, by the said saw with the guard in its safe "down" position.

The plaintiff did the said trimming without the guard being in its safe "down" position by using his hands to exert pressure to keep the strip against the guide and to feed the strip to the teeth of the saw, and while doing so his right hand slipped on the formica strip and came into contact with the saw.

The defendants' case was that: (i) There had been no breach of their statutory duty to the plaintiff and (ii) The accident was caused, not by any negligence on their part, their servants or agents, but by that of the plaintiff himself or contributed to by him.

The trial, although common law negligence had been pleaded by the plaintiff, proceeded mainly on the basis of the defendants having breached their statutory duty under the Act.

The case of *Ong Beng How* v. *Guan Seng Sawmill Company (Private) Limited*[1] clearly states that section 22(1) of the Act "imposes on an employer an absolute duty to securely fence any dangerous part of any machinery so that the operator of the machinery does not come into contact with the dangerous part. See the decision of the House of Lords in *John Summers & Sons* v. *Frost* [1955] A.C. 740 and the decision of this court in *Ng Kay Thiam & Anor.* v. *Redhill Paper Converters Ltd.* [1971] 2 M.L.J. 256. It is however clear on the authority of *Caswell* v. *Powell Duffryn Associated Collieries, Limited* [1940] A.C. 152 that it is open to the court to find an element of contributory negligence in the conduct of the plaintiff in an action based upon a breach of statutory duty as in an action based on common law negligence."

For the plaintiff, he himself and his trainee mate gave evidence; for the defendant company their Inspector of the Woodwork Section gave evidence. I accepted the evidence of the plaintiff who, in my view, gave his evidence well and truthfully. The main defence of the defendants was one of the plaintiff failing to heed the instructions given by the instructor and that if the plaintiff had carried out the instructions so given the accident would not have taken place. From the evidence of the instructor I was satisfied that he did not exercise, and indeed as the only supervisor in charge of 14 trainees working on 6 different types of machines in his workshop he could not exercise adequate supervision or control over the plaintiff and his mate. I accepted the plaintiff's evidence that nobody had told him or his mate that they were not to work the machines when the instructor was not present. Further, I was satisfied that if the instructor had exercised proper control over the switches controlling the operation of the machines in the workshop this unfortunate accident need not have happened.

On the evidence before me it was clear beyond doubt that the defendant company were in breach of their statutory duty under section 22(1) of the Act in that they had not securely fenced the power-driven saw blade of the Rib-Saw Machine.

Having so decided the only other issue was whether, on the evidence before me, the plaintiff was guilty of contributory negligence.

Inadvertent or careless acts and excusable lapses on the part of the factory worker do not amount to contributory negligence. "The policy of statutory protection would be nullified if a workman were held debarred from recovering because he was guilty of some carelessness or inattention to his own safety, which though trivial in itself threw him into the danger consequent on the breach by his employer of the statutory duty." (*Caswell's case*[2] at page 179). As laid down by the Court of Appeal in *Ong Beng How's* case, "fencing is intended (by the Act) to protect not only the prudent, alert and skilled operator intent upon his task but also the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risks of injury or death from the unguarded part". Yet again in a House of Lords case, Lord Tucker had this to say:

> "It is true that, in accordance with what was said in this House in *Caswell's* case, there may be cases, such as those involving breach of statutory duty, where an employer who is in breach of his duty cannot be heard as against his own servant who has been injured thereby to say that some risky act due to familiarity with the work or some inattention resulting from noise or strain amounts to contributory negligence. In this respect it is possible the same act may have different consequences when the injured man is the plaintiff suing his employers and where the employer is being sued by a third party (including another employee) in respect of the same act or omission. This is not so illogical as may appear at first sight when it is remembered that contributory negligence is not founded on breach of duty (cf. *Nance* v. *British Columbia Electric Railway Co. Ltd.* and *Lewis* v. *Denye* and the cases there referred to), although it generally involves a breach of duty, and that in Factory Act cases the purpose of imposing the absolute obligation is to protect the workmen against those very acts of inattention which are sometimes relied upon as constituting contributory negligence so that too strict a standard would defeat the object of the statute." (*Staveley Iron & Chemical Co. Ltd.* v. *Jones* [1956] A.C. @ 648).

If I may use the words of the Court of Appeal in *Ong Beng How's* case which is apposite to the instant case, "The accident in the present case was just the type of accident against which section 22(1)

of the Factories Act is directed. The appellant having established the respondents' breach of statutory duty which gave him a right to damages, it was for the respondents to prove contributory negligence against him. In our opinion this they failed to do."

In my judgment, in the instant case, on the evidence before me the defendants had failed to prove contributory negligence on the part of the plaintiff. Accordingly I entered judgment for the plaintiff in the sum of $22,500 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Cooma, Lau & Loh.*

YEO JIN BUNG v. HONGKONG AND SHANGHAI BANK (SINGAPORE) TRUSTEE LTD. & ORS.

[A.C.J. (Choor Singh J.) July 7, 1978]
[Singapore — District Court Appeal No. 55 of 1976]

Landlord and Tenant — Claim for possession — Allegation that tenant received rents from subtenants exceeding 110% of rent payable by tenant — Tenant subletting portions of house — Rooms away from main building built by tenant and sublet to tenants — P.U.B. Services supplied to subtenants at expense of tenant — Apportionment of rent and payments — Control of Rent Act (Cap. 266), s. 15(1)(g).

This was an appeal from the judgment of the district court which gave possession of the premises to the respondents. The appellant had been a tenant of the premises since before the Japanese occupation. She had carried out repairs, alterations and additions to the building and built new rooms away from the main building. She occupied only a part of the premises and sublet the remaining rooms to subtenants at various rents. Some of the rooms were let furnished. The appellant provided all the P.U.B. services to her sub-tenants at her expense. The learned District Judge held that as the rents collected by the appellant in respect of the rooms exceeded 110% of the rent paid to the respondents, she was in breach of section 15(1)(g) of the Control of Rent Act. The appellant appealed.

Held, allowing the appeal: (1) the learned District Judge had failed to take into consideration the fact that the appellant had constructed certain rooms away from the main building, that she paid for the P.U.B. services and that some of the rooms were let furnished and that she retained a portion of the premises for her own occupation;

(2) there should have been an apportionment of the rentals in this case but this was not done;

(3) in the circumstances there was no satisfactory evidence before the court for the application of section 15(1)(g) of the Control of Rent Act.

Cases referred to:-

(1) *Reshty* v. *Syed Ahmed Al-Junied & Ors.* [1966] 2 M.L.J. 121.

(2) *Kwek Kim Hock* v. *Ong Boon Siong* [1954] M.L.J. 253, 254.

CIVIL APPEAL.

Kirpal Singh for the appellant.

S. Velupillai for the respondent.

Cur. Adv. Vult.

Choor Singh J.: This was an appeal against the judgment of a district court. The appeal arose from a claim by the plaintiffs for possession of the premises known as 81 Wilkie Road, Singapore.

The defendant became a tenant of the premises before the Japanese occupation of Singapore. The premises are accordingly "rent controlled". It is a very old two-storied bungalow with a compound and out-houses. The defendant has been a tenant in occupation for some 40 years and during this period has been carrying out repairs, alterations, additions and building new rooms without anybody questioning her because the property belongs to the estate of a deceased person. The defendant occupied only a part of the premises where she lived with her family and she has been sub-letting the remaining rooms at various rents. Some of the rooms were let furnished and others unfurnished. The P.U.B. charges were borne by the defendant and all her sub-tenants received free water, light and other services. The rooms sublet by the defendant clearly fell into three distinct categories; rooms built by the defendant, rooms let furnished and rooms let unfurnished. And an additional complicating factor was that the defendant provided all P.U.B. services to all her sub-tenants at her expense.

It was only in 1975 that the trustees of the estate of the deceased decided to recover possession from the defendant, and after the requisite Notice to Quit, they commenced these proceedings. They claimed that they were not precluded by the provisions of the Control of Rent Act (Chapter 266) from recovering possession by virtue of section 15(1)(g) of the said Act. They alleged that the defendant was in breach of that section which provides as follows: —

"15. — (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Act may be made in any of the following cases, namely:—

(g) where the tenant having sublet the premises or part thereof receives in respect of that subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per cent of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him; ..."

The evidence put before the learned District Judge showed that the defendant was paying to the plaintiffs a monthly rent of $144 and collecting from her subtenants in respect of rooms let out by her a total sum of about $600 per mensem. The learned District Judge after considering all the evidence and the submissions made by both counsel, made an Order that the defendant deliver vacant possession to the plaintiffs of "the premises known as 81 Wilkie Road, Singapore". The defendant appealed against the whole of the decision of the learned District Judge.

At the hearing of the appeal before me, I noticed that there were in the judgment of the learned District Judge errors of law on account of which the judgment could not be sustained. I propose to deal with only three of them.

First, in my judgment, the learned District Judge erred in law in failing to take into consideration that certain rooms away from the main building were constructed by the defendant. Her evidence on this aspect of the case was not contradicted by the plaintiffs. She was quite clearly the owner of these rooms. Accordingly the rent collected from these rooms should not have been included in the total rent collected by her